

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1275 Physician Assistants

**SPONSOR(S):** Health & Human Services Committee; Select Committee on Health Care Workforce Innovation; Ahern and others

**TIED BILLS:**                   **IDEN./SIM. BILLS:**

| REFERENCE   | ACTION              | ANALYST | STAFF DIRECTOR or<br>BUDGET/POLICY CHIEF |
|---|---------------------|---------|--|
| 1) Select Committee on Health Care Workforce Innovation | 16 Y, 0 N, As<br>CS | Dunn    | Calamas                                  |
| 2) Health & Human Services Committee                    | 17 Y, 0 N, As<br>CS | Dunn    | Calamas                                  |

### SUMMARY ANALYSIS

A physician assistant (PA) is a person licensed to perform health care services, in the specialty areas in which he or she has been trained, delegated by a supervising physician. PAs are governed by the respective physician practice acts for medical doctors (MDs) and doctors of osteopathic medicine (DOs), because PAs may only practice under the supervision of a MD or DO. A physician may supervise up to four PAs and is responsible and liable for the performance and acts and omissions of the PA. Upon submission of required paperwork to the Department of Health (DOH), a supervising physician may delegate to a PA the authority to prescribe or dispense any medicinal drug used in the supervisory physician's practice.

This bill amends chapters 458 and 459, F.S., to streamline administrative procedures for PAs seeking prescribing authority and for PA applicants seeking licensure. Instead of requiring PAs to submit a signed affidavit to attest to the completion of required continuing education in order to obtain prescribing privileges, the bill requires PAs to certify to the completion of the continuing education. The bill removes the requirement that PA applicants submit two letters of recommendation to be eligible for licensure.

The current requirement for PA applicants to give a sworn statement of prior felony convictions or previous license denials or revocations when applying for licensure is changed to require a statement of such actions. The bill requires a PA applying for initial licensure on or after January 1, 2015, to submit fingerprints for background screening.

The bill also increases the number of physician assistants a physician may supervise from four to eight, except for physicians supervising dermatological services at an office other than the physician's primary practice location. The bill allows MDs or DOs without board certification or board eligibility in dermatology or plastic surgery to supervise physician assistants performing certain aesthetic skin care services if the physician assistant has specialized postlicensure training in skin conditions and procedures.

The bill also requires a PA to have a designated supervising physician and to notify the DOH of changes in the designated supervising physician within 30 days after the change. The requirement to have a designated supervising physician does not prevent a PA from practicing under multiple supervising physicians.

The bill allows prescriptions to be in written or electronic form, as long as in compliance with prescription labeling information requirements.

The bill has an insignificant positive fiscal impact on the Florida Department of Law Enforcement. The bill has an insignificant negative fiscal impact on the DOH. The bill has no fiscal impact on local governments.

The bill provides an effective date of July 1, 2014.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Physician Assistants

A physician assistant (PA) is a person licensed to perform health care services, in the specialty areas in which he or she has been trained, delegated by a supervising physician.<sup>1</sup> Currently, there are 5,874 in-state, and 713 out-of-state, active licensed PAs in Florida.<sup>2</sup>

Prior to becoming a licensed PA in Florida, an applicant must pass the Physician Assistant National Certifying Exam.<sup>3</sup> Eligibility to take the exam requires graduation from an accredited PA program.<sup>4</sup> Earning a degree from an accredited PA program usually takes at least two years of full-time postgraduate study.<sup>5</sup> Most applicants to physician assistant education programs already have a bachelor's degree and some healthcare-related work experience.<sup>6</sup>

PAs are governed by the respective physician practice acts for medical doctors (MDs) and doctors of osteopathic medicine (DOs), because PAs may only practice under the supervision of a MD or DO.<sup>7</sup> Specifically, sections 458.347(7) and 459.022(7), F.S., govern the licensure of PAs. PAs are regulated by the Florida Council on Physician Assistants (Council) in conjunction with either the Board of Medicine for PAs licensed under ch. 458, F.S., or the Board of Osteopathic Medicine for PAs licensed under ch. 459, F.S.

An applicant for a PA license must apply to the Department of Health (department). The department must issue a license to a person certified by the Council as having met all of the following requirements:<sup>8</sup>

- Is at least 18 years of age;
- Has satisfactorily passed a proficiency examination by an acceptable score established by the National Commission on Certification of Physician Assistants;<sup>9</sup>
- Has completed an application form and remitted an application fee not to exceed \$300 as set by the boards;
- Holds a certificate of completion of a PA training program, including certain course descriptions relating to pharmacotherapy if the PA applicant seeks prescribing authority;
- Provides a sworn statement of any prior felony convictions;
- Provides a sworn statement of any previous revocation or denial of licensure or certification in any state; and
- Provides two letters of recommendation.

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<sup>1</sup> Section 458.347(1), F.S.

<sup>2</sup> E-mail from Florida Department of Health to the Health and Human Services Committee (Nov. 7, 2013) (on file with committee staff).

<sup>3</sup> National Commission on Certification of Physician Assistants, *PANCE*, available at <https://www.nccpa.net/pance> (last visited Mar. 31, 2014).

<sup>4</sup> Programs are accredited by the Accreditation Review Commission on Education for the Physician Assistant (ARC-PA). *Id.*

<sup>5</sup> Bureau of Labor Statistics, *Physician Assistants*, available at <http://www.bls.gov/ooh/healthcare/physician-assistants.htm> (last visited Mar. 31, 2014).

<sup>6</sup> *Id.*

<sup>7</sup> Chapters 458 and 459, F.S.

<sup>8</sup> Section 458.347(7), F.S.; section 459.022(7), F.S.

<sup>9</sup> The proficiency measure for the exam is a scaled score; therefore, what is considered a passing score fluctuates with each administration. National Commission on Certification of Physician Assistants, *Exam Development and Scoring*, available at <http://www.nccpa.net/Scoring> (last visited Mar. 31, 2014).

A PA's license must be renewed biennially. Each renewal must include:

- A renewal fee not to exceed \$500 as set by the boards;<sup>10</sup>
- A sworn statement of no felony convictions in the previous 2 years; and
- Proof of completion of 100 hours of continuing medical education within the biennial period or a current certificate issued by the National Commission on Certification of Physician Assistants.

### *Council on Physician Assistants*

The Council was created in 1995 to recommend the licensure requirements (including educational and training requirements) for PAs, establish a formulary of drugs that PAs are prohibited to prescribe, and develop rules to ensure that the continuity of a physician's supervision over a PA is maintained in each practice setting throughout the state.<sup>11</sup> The Council does not discipline PAs. Disciplinary action is the responsibility of either the Board of Medicine or the Board of Osteopathic Medicine (boards).

### *Supervising Physician*

A PA practices under the delegated authority of a supervising physician. A physician supervising a PA must be qualified in the medical area(s) in which the PA is to perform health care tasks and is responsible and liable for the performance and acts and omissions of the PA.<sup>12</sup> A physician is not allowed to supervise more than four PAs at any one time.<sup>13</sup>

Supervision is defined as responsible supervision and control that requires the easy availability or physical presence of the physician for consultation and direction of actions performed by a PA.<sup>14</sup> Easy availability includes the ability to use telecommunication.

The respective board is delegated the authority to establish by rule what constitutes responsible supervision. Responsible supervision, defined by rule, is the ability of the supervising physician to responsibly exercise control and provide direction over the services or tasks performed by the PA.<sup>15</sup> In providing supervision, the supervising physician is required to periodically review the PA's performance. In determining whether supervision is adequate, the following factors must be considered:<sup>16</sup>

- The complexity of the task;
- The risk to the patient;
- The background, training and skill of the PA;
- The adequacy of the direction in terms of its form;
- The setting in which the tasks are performed;
- The availability of the supervising physician;
- The necessity for immediate attention; and
- The number of other persons that the supervising physician must supervise.

The boards are authorized to adopt by rule the general principles that supervising physicians must use in developing the scope of practice of a PA under direct and indirect supervision.<sup>17</sup> Direct supervision refers to the physical presence of the supervising physician on the premises so that the supervising physician is immediately available to the PA when needed; whereas, indirect supervision refers to the easy availability of the supervising physician, such that the supervising physician must be within reasonable physical proximity.<sup>18</sup>

<sup>10</sup> The fee is currently set at \$275. Fla. Admin. Code Ann. r. 64B8-30.019.

<sup>11</sup> Section 458.347(9); section 459.022(9), F.S.

<sup>12</sup> Section 458.347(3), F.S.; Fla. Admin. Code Ann. r. 64B8-30.012.

<sup>13</sup> *Id.*

<sup>14</sup> Section 458.347(1)(f), F.S.

<sup>15</sup> Fla. Admin. Code Ann. r. 64B8-30.001.

<sup>16</sup> *Id.*

<sup>17</sup> Section 458.347(4)(a); section 459.022(4)(a), F.S.

<sup>18</sup> Fla. Admin. Code Ann. r. 64B8-30.012; Fla. Admin. Code Ann. r. 64B15-6.010.

Under current regulations, the decision to allow the PA to perform a task or procedure under direct or indirect supervision is made by the supervising physician based on reasonable medical judgment regarding the probability of morbidity and mortality to the patient.<sup>19</sup> An example of unreasonable medical judgment is a PA providing emergency room medical services to patients when the supervising physician is located 500 miles away.<sup>20</sup> Additionally, it is the responsibility of the supervising physician to be certain that the PA is knowledgeable and skilled in performing the tasks and procedures assigned.

Current law specifies supervision requirements for offsite supervision of dermatological services. Physicians supervising dermatologist PAs are required to have a primary place of practice within 75 miles.<sup>21</sup> However, this requirement does not apply to MDs who supervise offices at which the exclusive service being performed by a PA is laser hair removal.<sup>22</sup>

The number of PAs a supervising physician may supervise varies by state.<sup>23</sup> According to the American Academy of Physician Assistants, eleven states place no restriction on the number of PAs that may be supervised.<sup>24</sup> Sixteen states, including Florida, and the District of Columbia limit the amount to four.<sup>25</sup> Sixteen states have a limit of two or three,<sup>26</sup> and seven states have a limit of five or six.<sup>27</sup>

### *Delegable Tasks*

A supervisory physician may delegate to a PA the authority to:

- Prescribe or dispense any medicinal drug used in the supervisory physician's practice.<sup>28</sup>
- Order medicinal drugs for a hospitalized patient of the supervising physician.<sup>29</sup>
- Administer a medicinal drug under the direction and supervision of the physician.<sup>30</sup>

Currently, PAs are prohibited from prescribing controlled substances (Schedules I-V under s. 893.03, F.S.); general, spinal, or epidural anesthetics; and radiographic contrast materials.<sup>31</sup> However, physicians may delegate to PAs the authority to order controlled substances in facilities licensed under ch. 395, F.S. (hospitals, ambulatory surgical centers, or mobile surgical facilities).

Determination of the final diagnosis must be performed by the supervising physician, and may not be delegated to a PA.<sup>32</sup> Per rule, the following tasks are not permitted to be performed under indirect supervision:<sup>33</sup>

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<sup>19</sup> *Id.*

<sup>20</sup> See *Department of Health, Board of Medicine v. Arnaldo Carmouze, P.A.*, Case No. 98-4993 (DOAH September 24, 1999).

<sup>21</sup> Section 458.348, F.S.

<sup>22</sup> Section 458.348(4)(e), F.S.

<sup>23</sup> The authority of Boards charged with regulating PAs also varies by state. In some states with a defined limit on PA supervision, the regulatory Board may be given rulemaking authority to increase or decrease the limit. See DEL. CODE ANN. tit. 24, § 1771(f). In other states, the Board may be granted discretionary authority to pierce the limit on a case by case basis. See Or. Rev. Stat. § 677.510. Some statutes also contain exceptions to PA supervision limits based on the type of health care facility in which the supervision occurs. See KAN. STAT. ANN. § 65-28a10.

<sup>24</sup> Alaska, Arkansas, Maine, Massachusetts, Montana, New Mexico (ODs may only supervise two PAs), North Carolina, North Dakota, Rhode Island, Tennessee, and Vermont. American Academy of Physician Assistants, *State Laws and Regulations Governing the Number of Physician Assistants that One Physician may Supervise*, materials on file with committee staff.

<sup>25</sup> Arizona, California, Colorado, Delaware, D.C., Florida, Georgia, Maryland, Michigan, Nebraska, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, South Dakota, and Utah. *Id.*

<sup>26</sup> Alabama (full time equivalent PAs), Hawaii, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Nevada, Ohio, Oklahoma, South Carolina, West Virginia, Wisconsin, and Wyoming. *Id.*

<sup>27</sup> Connecticut, Illinois, Iowa, Minnesota, Texas, Virginia, and Washington. *Id.*

<sup>28</sup> Section 458.347(4)(e), F.S.; section 459.022(4)(e), F.S. The supervising physician must notify the department of intent to delegate prescribing authority, and the PA must file with the department a signed affidavit that he or she has completed a minimum of 10 continuing medical education hours in the specialty practice area each renewal period. *Id.* The PA must identify to the patient as a PA and inform the patient of the right to see the physician. *Id.* The PA must note the prescription or dispensing of medication in the appropriate medical record. *Id.*

<sup>29</sup> Section 458.347(4)(f); section 459.022(4)(f), F.S.

<sup>30</sup> Fla. Admin. Code Ann. r. 64B8-30.008; Fla. Admin. Code Ann. r. 64B15-6.0038.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

- Routine insertion of chest tubes and removal of pacer wires or left atrial monitoring lines;
- Performance of cardiac stress testing;
- Routine insertion of central venous catheters;
- Injection of intrathecal medication without prior approval of the supervising physician;
- Interpretation of laboratory tests, X-ray studies and EKG's without the supervising physician interpretation and final review; and
- Administration of general, spinal, and epidural anesthetics; this may be performed under direct supervision only by PA who graduated from a board-approved anesthesiology assistants program.

## **Effect of Proposed Changes**

### PA Licensure

This bill amends chapters 458 and 459, F.S., to streamline administrative procedures for PAs seeking prescribing authority and for PA applicants seeking licensure. Instead of requiring PAs to submit a signed affidavit to attest to the completion of required continuing education in order to obtain prescribing privileges, the bill requires PAs to certify to the completion of the continuing education. The bill removes the requirement that PA applicants submit two letters of recommendation to be eligible for licensure.

The current requirement for PA applicants to give a sworn statement of prior felony convictions or previous license denials or revocations when applying for licensure is changed to require a statement of such actions. The bill requires a PA applying for initial licensure on or after January 1, 2015, to submit fingerprints for background screening.

### PA Supervision

The bill also increases the number of physician assistants a physician may supervise from four to eight, except for physicians supervising dermatological services at an office other than the physician's primary practice location.

The bill allows MDs or DOs who have completed 24 hours of education and clinical training on "nonablative aesthetic skin care services" but do not have board certification or board eligibility in dermatology or plastic surgery to supervise physician assistants performing "nonablative aesthetic skin care services" if the physician assistant has specialized postlicensure training in skin conditions and procedures. "Nonablative aesthetic skin care services" includes, but is not limited to, services provided using intense pulsed light, lasers, radio frequency, ultrasound, injectables, and fillers. The PA must have the following postlicensure training:

- Forty hours of postlicensure education and clinical training on physiology of the skin, skin conditions, skin disorders, skin diseases, preprocedure and postprocedure skin care, and infection control;
- Forty hours of postlicensure education and clinical training on laser and light technologies and skin applications; and
- Thirty-two hours of postlicensure education and clinical training on injectables and fillers.

The bill also requires a PA to have a designated supervising physician and to notify the DOH of changes in the designated supervising physician within 30 days after the change. The requirement to have a designated supervising physician does not prevent a PA from practicing under multiple supervising physicians.

The bill allows prescriptions to be in written or electronic form, as long as in compliance with prescription labeling information requirements.

The bill provides an effective date of July 1, 2014.

**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 458.347, F.S., relating to physician assistants.

**Section 2.** Amends s. 458.348, F.S., relating to formal supervisory relationships, standing orders, and established protocols; notice; standards.

**Section 3.** Amends s. 459.022, F.S., relating to physician assistants.

**Section 4.** Amends s. 459.025, F.S., relating to formal supervisory relationships, standing orders, and established protocols; notice; standards.

**Section 5.** Provides an effective date of July 1, 2014.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The bill has an insignificant negative fiscal impact on the DOH associated with non-recurring costs for rulemaking, which current budget authority is adequate to absorb.<sup>34</sup>

The bill has an insignificant positive fiscal impact on the Florida Department of Law Enforcement (FDLE) associated with criminal history record checks for PAs applying for initial licensure after January 1, 2015. The FDLE anticipates an increase in revenue of \$12,000 for Fiscal Year 2014-2015.<sup>35</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

PAs applying for initial licensure after January 1, 2015, will have to pay for a criminal history record check. The cost of a criminal history record check is \$77.50.<sup>36</sup> The estimated total economic impact on the private sector is \$19,375 Fiscal Year 2014-2015.<sup>37</sup>

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

<sup>34</sup> Department of Health Bill Analysis of HB 1275, March 28, 2014, on file with committee staff.

<sup>35</sup> Florida Department of Law Enforcement Bill Analysis of CS/CS/HB 1275, April 4, 2014, on file with committee staff.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On lines 125-131, the bill requires a PA to notify the DOH of the address of a designated supervising physician. On line 133, the bill refers to the assignment of a supervising physician. However, the bill does not specify who designates or assigns the supervising physician to the PA.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On April 3, 2014, the Health and Human Services Committee adopted an amendment to CS/HB 1275 and reported the bill favorably as a committee substitute. The amendment:

- Prohibits a physician supervising dermatological services at an office other than the physician's primary practice location from supervising more than four physician assistants.
- Allows prescriptions to be in written or electronic form, as long as in compliance with current prescription labeling information requirements.
- Requires physician assistants who apply for initial licensure on or after January 1, 2015, to submit fingerprints for background screening.
- Requires a physician assistant to have a designated supervising physician.
- Requires a physician assistant to notify DOH of a change in the designated supervising physician within 30 days after the change.
- Provides that the requirement to have a designated supervising physician does not prevent a physician assistant from practicing under multiple supervising physicians.
- Allows MDs and DOs with special education and clinical training in skin care service but do not have board certification or board eligibility in dermatology or plastic surgery to supervise physician assistants performing certain aesthetic skin care services if the physician assistant has specialized postlicensure training in skin conditions and procedures.

This analysis is drafted to the committee substitute.